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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,308	01/30/2004	Richard Wayne Buskens	LUC-450/Buskens 6-1-1-1-2	6327
32205 7590 07/24/2007 PATTI, HEWITT & AREZINA LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO, IL 60602			EXAMINER WANG, RONGFA PHILIP	
			ART UNIT 2191	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/768,308	Applicant(s) BUSKENS ET AL.	
	Examiner Philip Wang	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detail Action

1. This office action is in response to the application filed on 5/8/2007.
2. Per Applicant's request, claims 1-16, and 21 are amended.
3. The 35 U.S.C. 112 first paragraph rejections of claims 14 and 21 are withdrawn in view of the Applicant's persuasive arguments.
4. The 35 U.S.C. 112 second paragraph rejections of claim 12 is withdrawn in view of the Applicant's persuasive arguments.
5. Claims 1-21 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-15 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15, and 21 recites an article, comprising one or more computer-readable signal-bearing media. Current practice of the Office does not consider signal as a statutory subject matter. According to the Applicant's specification, a computer-readable signal-bearing media can be a modulated carrier signal (p. 10). Further an electrical data storage medium can be interpreted as signal as signal is electrical. Also, page 2, line 16-17, "The article comprised one

or more computer-readable signal-bearing media." further indicate such article is not a statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 13 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Per claim 13, it recites the limitation of the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software. Upon reviewing the Applicant's specification on page 7, for example, it discloses

"...So, the software and/or hardware entity 102 may exist outside of the high availability domain while still employing one or more functions of the high availability services software. The software and/or hardware entity 102 may allow connection with the management component 106 (e.g., the high availability services software) and allow connection with the management component 104 to prevent autonomous

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control of the software and/or hardware entity 102 by one of the management components 104 and 106, such as, the high availability services software. For example, the high availability services software is able to peer with the management component 104 to cooperatively manage the software and/or hardware entity 102 not under the exclusive control of the high availability services software”

It appears the disclosure describes what the invention wants to do without providing detailed information describing how the management component can prevent autonomous control of the software and/or hardware entity 102 by one of the management components 104 and 106, such as, the high availability services software. One having ordinary skill in the art will not be able to make or use the invention. For this reason, the instant claim is considered lacking enablement requirement.

Per claim 20, similar to claim 13, the disclosure, for example, on page 7 merely states what the invention can do without actually providing any detail. One skilled in the art will not be able to make or use this invention and is therefore considered lacking enablement requirement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Baughman (US Patent No. 6,408, 399).

As per claim 1,

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity, wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity. (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

As per claim 16,

- configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...")..

As per claim 21,

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component(c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

9. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (USPGPub. No. 2003/0058796).

As per claim 1, Anderson discloses

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices. See also, FIG. 2).

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- Wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity (in this scenario the first manager component and the second manager component function concurrently to share management responsibility).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component and the second manager component are communicatively coupled ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

- the first manager component and the second manager component coordinate the one or more first and second management operations to occur in a proper sequence ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager..."; [0033], "...decide how

to configure the logical networks on top of the physical network resources...").

As per claim 4,

the rejection of claim 1 is incorporated;

further Anderson discloses

- upon detection by the first management component of an event associated with the software and/or hardware entity, the first manager component sends a notification to the second manager component; wherein upon detection by the second management component of an event associated with the software and/or hardware entity, the second manager component sends a notification to the first manager component([0021], shows monitoring of network event, [0018], [0019], show manager components communicating with each other.).

As per claim 5,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first manager component starts up the software and/or hardware entity and the one or more software and/or hardware components; wherein the first manager component sends a notification to the second manager component to indicate that the software and/or hardware entity

and the one or more software and/or hardware components have been started ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 6,

the rejection of claim 5 is incorporated;

further Anderson discloses

- the second manager component initializes one or more of the one or more software and/or hardware components; wherein the second manager component sends a notification to the first manager component to indicate that the one or more of the one or more software and/or hardware components have been initialized ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 7,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first and second manager components cooperate to initialize, monitor, and detect one or more failures of the software

and/or hardware entity and one or more of the one or more software and/or hardware components, wherein the first and second manager components dynamically negotiate the management responsibilities. ([0021]).

As per claim 8,
the rejection of claim 7 is incorporated;
further Anderson discloses

- the first and second manager components cooperate to recover the software and/or hardware entity from the one or more failures ([0068], "...restored quickly in the event hardware failure...").

As per claim 9,
the rejection of claim 1 is incorporated;
further Anderson discloses

- the first manager component sends a request to the second manager component to cause the second manager component to perform a management operation of the one or more second management operations on the software and/or hardware entity ([0019]).

As per claim 10,
the rejection of claim 1 is incorporated;

further Anderson discloses

- the second manager component comprises high availability services software; wherein the first manager component comprises a legacy system ([0068], line 2, "...high availability...").

As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the second manager component comprises high availability services software operating in a high availability domain; wherein the software and/or hardware entity operates outside of the high availability domain, wherein the high availability services software comprised the one or more second management operations; wherein the software and/or hardware entity interacts with the high availability domain([0068], line 2, "...high availability...").

As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain to employ one or more of the one or more second management operations of the high availability services software([0068], line 2, "...high

availability...").

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "...high availability...").

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections ([0060], "...creating...and tearing down connections...").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more first software and/or hardware components and one or more second software and/or hardware components; wherein the first manager component controls the one or more first software and/or hardware components; wherein the second manager component controls the one or more second software and/or hardware components ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

As per claim 16,

Anderson discloses

- configuring a software and/or hardware entity for concurrent partial control by a first manager component and a second manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component

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can be a provisioning manager; and the software and/or hardware entity is the network devices.).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

- allowing the software and/or hardware entity to accept one or more first management operations from the first manager component and one or more second management operations from the second manger component, wherein the first and second manager components cooperate to initialize, monitor, and detect failures of the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices.", [0021], "...monitoring..."; [0058], "...provisioning..."; The examiner asserts that monitoring detect failures.)

As per claim 18,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the second manager component comprises high availability services software operating in a high availability domain, the method further comprising the steps of: operating the software and/or hardware entity outside of the high

availability domain; and connecting the software and/or hardware entity with the high availability services software within the high availability domain ([0068], line 2, "...high availability...").

As per claim 19,

the rejection of claim 16 is incorporated;

further Anderson disclose

- sending one or more notifications between the first manager component and the second manager component to indicate occurrence of one or more events associated with the software and/or hardware entity ([0018], [0019]).

As per claim 20,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first software and/or hardware components, wherein the step of configuring the software and/or hardware entity for partial control by the first manager component and partial control by the second manager component comprises the steps of: connecting the one or more first software and/or hardware components with the first manager component to employ one or more first management operations of the first manager component; and connecting the one or more second software and/or hardware components with the second manager component to employ one or more

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second management operations of the second manager component and to prevent autonomous control of the software and/or hardware entity by the first manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices."; [0068], line 2, "...high availability...").

As per claim 21,

Anderson discloses

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component and a second manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

Response to Arguments

In the remark,

1) The Applicant argues

Specification page 4, line 14 to page 5, line 8, supports the limitation of claim 13.

1) The examiner's response

After reviewing the above mentioned portion of the specification, it appears that the disclosure is about sharing management responsibility. The examiner still cannot find any disclosure address limitation related to "prevent autonomous control". On the contrary, specification, page 4, line 10, specifically expressively discloses "...not under autonomous control by a single manager..."

2) The Applicant argues

Per claim 14, setup operations and teardown operations for telecommunication connections performed within a telecommunication network are well known in the telecommunications arts.

2) The examiner's response

The examiner acknowledges this is the Applicant's admission of such limitation as prior art.

3) The Applicant argues

Baughman teaches away from shared management responsibility of the disk 10 and 11, instead teaches an active/standby relationship. And Baughman fails to disclose the first manager component and the second manager component that are configured to concurrently share management responsibility.

3) The examiner's response

One interpretation of the meaning of concurrent is acting in conjunction, or cooperating.

Under this interpretation, an active/standby setup fulfills a cooperating configuration.

The Applicant points to column 5, lines 18-23, where it discloses an possible error condition when both the servers are active.

The Applicant appears to interpret one possible embodiment of a concurrent share management is when both servers are active. Precisely as the Application has pointed out, it is possible for both servers to be active at the same time. Though it is considered as an error, it does not preclude the reference being use as prior art. See MPEP 2141.02 [R-5], VI.

4) The Applicant argues

Anderson fails to disclose the first manager component and the second manger component that are configured to concurrently share management responsibilities for the software and/or hardware entity.

4) The examiner's response

One interpretation of the meaning of concurrent is acting in conjunction, or cooperating.

Under this interpretation, an active/standby setup fulfills a cooperating configuration.

Therefore, the traffic manager and provisioning manager are working concurrently to provision a network. The claim language does not include sufficient limitations to be patentably disguisable to the Anderson reference.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

It is noted that any citation **[[s]]** to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. **[[See, MPEP 2123]]**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'WZ' followed by a long, sweeping horizontal stroke.

WEI ZHEN
SUPERVISORY PATENT EXAMINER